case. In my view the position in the case of an eye-witness giving expert evidence is that the Court must consider, as it does with any other sort of witness, whether there is any motive for bias, and give due weight to its conclusions on this point in assessing the value of the evidence given. I consider then this ground of appeal also must fail.

The conviction is, therefore, confirmed. I feel, however, with regard to sentence that it is not certain the learned Magistrate was right in apparently assessing the appellant, who is a trishaw-rider, was an "operator" as opposed to a mere "runner" in connection with this business. The Magistrate may have been right, but I think in the absence of fuller information it would be proper in assessing sentence to proceed on the basis more favourable to the appellant. I have, accordingly, decided to reduce the fine to one of $500 or 2 months' R.I.

Order accordingly.

Solicitors: *Braga & de Souza.*

CHYE AH SAN v. REGINA

[A. Cr. J. (Spenser Wilkinson J.) May 31, 1954]

[Penang — Criminal Appeal No. 10 of 1954]

Excise Enactment (Cap. 133), s. 51 — Statements to Customs Officers — Warning by Customs Officer before recording statement — Principle of nemo tenetur seipsum accusare — Question of threat or warning before recording statement — Evidence Ordinance, s. 24 — Differences between English law and local law on incriminating statements — Questions tending to criminate accused — "Information" — Meaning of — Judges' Rules — Breach of — Duty of prosecution to place all material evidence before the Court.

Where a person in authority, such as an Excise Officer, says, not that the accused is not bound to say anything but, quite the reverse, that he is bound to say everything, it is impossible to look upon the statement so obtained as being voluntary (**Rex v. Santokh Singh**(7) followed).

The maxim *nemo tenetur seipsum accusare* in this country is enforced in a different way from that in England. In England a witness in a Court of Law is not bound to answer questions which may tend to criminate him. In Malaya under the Evidence Ordinance a witness is bound to answer all questions even though they may tend to criminate him, but if he is forced to answer such questions then no proceedings can be taken against him based upon his answers except proceedings for perjury.

Section 51 of the Excise Enactment has reference to information regarding the activities of other persons and does not include self-incriminatory statements regarding the activities of the person from whom the information is sought. Section 51 does not intend to abrogate the general maxim *nemo tenetur seipsum accusare*, but was intended to be read subject to that maxim: its purpose and intention are to obtain information in regard to the activities of persons other than the person interrogated. If in the course of obtaining such information the person interrogated makes admissions amounting to a confession then such admission cannot be used in evidence against him. The information so obtained is intended to be used in the same way as evidence obtained under s. 124 of the Criminal Procedure Code, as a starting point for collecting evidence *aliunde* of offences thus disclosed to have been committed.

An Excise Officer when carrying out his duties of enforcing the law is in a very similar position to that of a Police Officer in England. Apart from any specific provision of the Enactment there is no reason why such an Officer should not ask questions from persons whether suspected or not from whom he thinks useful information can be obtained, as laid down in the Judges' Rules; and as neither s. 124 of the Criminal Procedure Code nor ss. 25 and 26 of the Evidence Ordinance apply to Customs or Excise Officers there is nothing in law to prevent the answers given to them by a person subsequently accused of an offence from being used in evidence provided the Court is satisfied that those answers were voluntarily given. Where there is a breach of the Judges' Rules the trial Court can in its discretion refuse to admit the statement (**Reg. v. Bass**(15) followed).

Whether or not an accused person has confessed it remains the duty of the prosecution to place all the material evidence before the Court with the proviso that they are not compelled to call witnesses whom they have good reason to think are not witnesses of truth or are likely to be hostile; and when such witnesses are not called they should usually be offered for cross-examination, unless there is some good reason for not doing so.

Cases referred to:—

(1) *Public Prosecutor v. Koay Oy Bin* Penang — Criminal Appeal No. 15 of 1950 (unreported).

(2) *Regina v. Scott* Dears & Bell 47; 169 E.R. 909.

(3) *Public Prosecutor v. Tay Yam Peng* (1951) M.L.J. 144; 2 M.L.R. 117.

(4) *Tan Shu En v. Public Prosecutor* (1948) M.L.J. 196.

(5) *Rasiah v. Public Prosecutor* (1931-32) F.M.S.L.R. 45.

(6) *Public Prosecutor v. Soh Tuan Cheung* (1949) M.L.J. 261.

(7) *Rex v. Santokh Singh* (1933) M.L.J. 178; (1933) S.S.L.R. 147.

(8) *Rex v. Treacy* (1944) 2 All E.R. 229 at 236.

(9) *Ibrahim v. Rex* (1914) A.C. 599.

(10) *Re Chops Loh Ban Chuan & Chuan Bee* (1933) M.L.J. 286.

(11) *Re Mohamed Yusoff Meera Hussain & Anor.* (1954) M.L.J. 45.

(12) *Chong Chin Yuan v. Public Prosecutor* (1949) M.L.J. 262.

(13) *Heah Chin Kim v. Public Prosecutor* Kedah — Criminal Appeal No. 13 of 1954 (unreported); Noted (1954) M.L.J. xxxiii.

(14) *Rex v. Man Woo* (1951) M.L.J. 20; 2 M.L.R. 40.

(15) *Regina v. Bass* 37 Cr. App. R. 51; (1953) 1 Q.B. 680; (1953) 1 All E.R. 1064; (1953) 2 W.L.R. 825.

(16) *Rex v. Sanmugam* (1932) M.L.J. 75; (1933) S.S.L.R. 337.

(17) *Public Prosecutor v. Lee Pak* (1937) M.L.J. 265; (1938) F.M.S.L.R. 1.

(18) *Adel Muhammed El Dabbah v. Attorney-General of Palestine* (1944) A.C. 156.

(19) *Mohamed Yatin v. Public Prosecutor* (1950) M.L.J. 57; 1 M.L.R. 7.

CRIMINAL APPEAL.

G. H. Conaghan for the appellant, in addition to the cases referred to above, also cited: *Rex v. Lim Ah Seng* (1931) S.S.L.R. 178 and *Queen v. Thompson* (1893) 2 Q.B. 12.

J. D. Peterkin (Federal Counsel) for the respondent, in addition to the cases referred to above also cited: *Regina v. Cross* 169 E.R. 917; *Rex v. Sloggett* 169 E.R. 885; *Rex v. Robinson* L.R. 1 C.C.R. 80; *Rex v. Widdop* L.R. 2 C.C.R. 3; and *Ex parte Schofield* 6 Ch. Div. 230.

Cur. Adv. Vult.

The facts and arguments appear sufficiently from the judgment below.

Spenser Wilkinson J. : — The appellant was charged in the Sessions Court as follows :—

"That you Chye Ah San male Khek on the 19th day of January, 1954 at Paya Terubong Road, Penang, were knowingly concerned in dealing intoxicating liquor (sic) to wit, 2 tins containing 3 gallons of intoxicating liquor on which the Excise Duty leviable by law has not been proved to have been paid amounting to $71.19 with intent to defraud the Government of the Excise Duty amounting to $71 thereon and you have thereby committed an offence under Section 62(d) of the Excise Enactment Cap. 133 and punishable under Section 62 of the same Enactment."

The case for the prosecution was that the appellant received from a certain Chinese the two tins of liquor referred to in the charge and then gave that liquor to another Chinese for sale on his behalf. The evidence in support of this charge consisted solely of certain statements made by the appellant to Customs Officers and proof, by analysis, that the contents of the two tins (which the appellant in one of those statements admitted he had dealt with) was intoxicating liquor.

Three statements were made by the appellant. The first was made at the house where he was first interviewed by Customs Officers to whom he opened the front door. In regard to this statement Mr. Caiger, P.W.1 stated in evidence :—

"I asked if he had sold any illicit liquor to another person nearby that evening. The accused said he had. He agreed he had helped to load this liquor on to a car."

This statement, however, was made through an interpreter, P.W.2, who stated in evidence :—

"I asked the accused if he had sold any liquor that night to a male Chinese who lived nearby. . . . . The accused said he had sold some liquor. I asked the accused if he had helped the Chinese to carry the liquor on to a car. He said he had done so."

As the interpreter said nothing about illicit liquor it must be assumed that the word "illicit" was never interpreted to the appellant, and his admission, if admissible in evidence, must be limited to that given in answer to the interpreter.

The next statement was made at the Customs Office. This is sufficiently brought out in the evidence of the interpreter as follows :—

"The accused was taken to the Customs Office, Penang and he was shown Exhibits P. 1 and P. 2 which he stated he had handed to the Chinese."

The third statement was recorded by Senior Customs Officer, Mr. Sheik Yusoff bin Sheik Hussain, P.W.5 at 2.50 a.m. some four hours after the earlier statements had been made and put in evidence as Exhibit P.5. It was taken in the presence of three other Chinese alleged to have been involved in the case. Before recording the statement the appellant was given what has been called a warning in the following terms :—

"Under Section 51 of the Excise Enactment, Chapter 133 you are bound to give certain information which I require if it is in your power to give it. It is my duty to warn you that any statement you make will be taken down in writing and may be used in evidence."

The relevant part of the statement is as follows :—

"Yesterday evening 19.1.54 a Chinese stranger came to my house and brought with him 4 tins and 1 rubber tube of Chinese liquor and offered me for sale. I agreed to buy and paid him $44. . . . . On the same evening I gave all the liquor to Ah Yong and requested him to sell the liquor for me. This is all I have to say. I now say that I only handed to Ah Yong (pointing Ah Yong) two small tins of liquor. I have no idea about the other containers of liquor."

The exact words of Section 51 of the Excise Enactment are very material to this case and I therefore set them out here —

"51. Every person required by a Senior Excise Officer to give any information on any subject which it is such officer's duty to enquire into under this Enactment and which information it is in his power to give shall be legally bound to give such information."

Section 50(ii) is as follows :—

"50. (ii) Any person furnishing as true information which he knows or has reason to believe to be false shall be guilty of an offence under Section 177 of the Penal Code."

It was contended by Mr. Conaghan on behalf of the appellant that none of the statements above mentioned was admissible in evidence. If the provisions of Section 51 have the effect of compelling a person to

confess then, he argued, it offends against the well-known principle of *nemo tenetur seipsum accusare.*

Mr. Conaghan further contended that the so-called warning given before the written statement was taken amounted to a threat, inducement or pressure, and rendered the statement inadmissible under the provisions of Section 24 of the Evidence Ordinance. With regard to the earlier statements he contended that they were inadmissible on the same basis as the written statement.

For the Crown it was argued that the statements were all admissible. With regard to the written statement in particular the Deputy Public Prosecutor relied in the first place upon the unreported judgment of Jobling J. in the case of *Public Prosecutor v. Koay Oy Bin*[1], to which I shall refer hereafter. He also relied upon the case of *Regina v. Scott*[2] and other English bankruptcy cases where it has been held that a bankrupt may have proved against him in a criminal trial answers he has given in his public examination.

The questions thus raised are of great importance, because the answers thereto will no doubt affect not only Excise cases but also cases under the Customs Ordinance, for Section 97 of the Customs Ordinance, 1952, is substantially the same as Section 51 of the Excise Enactment. Moreover, a somewhat similar provision also appears in the Dangerous Drugs Ordinance, 1952.

It is settled law since the decision of the Court of Appeal in *Public Prosecutor v. Tay Yam Peng*[3] that neither a Chandu Officer nor a Customs Officer is a "Police Officer" within the meaning of Sections 25 and 26 of the Evidence Ordinance. Nothing in this judgment is intended in any way to conflict with that decision by which I am bound, and with which, with all respect, I agree. In none of the reported cases, however, has the question been raised or discussed whether Section 24 of the Evidence Ordinance renders a statement taken and recorded by an Excise Officer under the provisions of Section 51 inadmissible, if before taking that statement a warning has been given drawing attention to that Section. A somewhat similar point was taken for the first time in the unreported case before Jobling J. above referred to (*Koay Oy Bin's*[1] *case*). That was an appeal by the Public Prosecutor against an acquittal in a case where the Sessions Court had refused to admit a statement made to a Customs Officer while the accused was in the latter's custody. As the statement was not admitted in the lower Court it does not appear from the record of that case what the statement was or precisely how it was taken, although it is clear that it was taken after the accused's arrest. The main ground argued on that appeal was that the case of *Tan Shu En v. Public Prosecutor*[4] should be followed and *Rasiah v. Public Prosecutor*[5] disregarded and the appeal was allowed on the ground that Sections 25 and 26 of the Evidence Ordinance not applying to Customs Officers the statement should not have been rejected.

In the course of his argument on behalf of the respondent in that case Mr. T. E. Conaghan argued that Section 24 rendered the statement inadmissible, but this argument was dealt with by the learned Judge in his judgment as follows:—

> "The statement in this case was undoubtedly made to a person in authority but in no sense can a legal obligation to make a statement and to tell the truth be considered a threat, nor can an avoidance of prosecution for not complying with the law be considered a gain within the meaning of the Section. In my opinion Section 24 does not apply to the statement in this case."

I do not think this was the real ground of the decision and I am inclined to think, therefore, that this part of Jobling J.'s judgment was *obiter;* but in any event I do not think that his opinion assists me in the present case, because the question of a threat or warning having been given before the statement was taken was never raised or discussed in that case whilst it is principally on account of the so-called warning in the present case that the provisions of Section 24 of the Evidence Ordinance are invoked.

With regard to the so-called warning I agree with the remarks of Taylor J. in *Public Prosecutor v. Soh Tuan Cheung*[6] to the effect that a warning in the nature of that laid down in the Emergency Regulations would be inconsistent with Section 51 of the Excise Enactment. The form of warning in the present case does not have this element of inconsistency, but I find it impossible to escape the conclusion that the first sentence of it amounts to some threat, promise or inducement. The pressure in this instance does not consist in the mere legal obligation but in the veiled threat to the person concerned to enforce that obligation. It seems to me that the moment a Revenue Officer says to a man: "You are bound by law to tell me all you know", that, if not a threat, is at least some form of pressure, and, as stated by Murison C.J. in *Rex v. Santokh Singh*[7]:—

> "The real point . . . . . is that the only thing abhorrent is pressure or inducement."

He added that cross-examination was a form of pressure and was equally abhorrent (see also *R. v. Treacy*[8]).

Under the Judges' Rules in England in order to ensure that a statement made by an accused is voluntary a policeman before taking his statement must inform him that he is not obliged to say anything. Where, therefore, we have a person in authority, such

as an Excise Officer, saying, not that the accused is not bound to say anything but, quite the reverse, that he is bound to say everything, I find it impossible to look upon the statement so obtained as being voluntary, which is the test laid down in *Santokh Singh's*[7] *case*. It is probably true to say that the decided cases have given to the wording of section 24 a rather wider meaning than its exact terms might be thought to justify, but I think it is too late now to depart from the decision of the Court of Appeal in *Santokh Singh's*[7] *case* which, as far as I know, has stood unchallenged for over 20 years, and appears to me to be in accord with the principles laid down by the Privy Council in *Ibrahim v. Rex*[9].

I come now to the other branch of Mr. Conaghan's submissions based on the general principle that no one should be compelled to criminate himself. The learned Deputy Public Prosecutor put forward a very cogent contrary argument based upon the bankruptcy cases in England, but I do not think that the case of *Regina v. Scott*[2] does more than decide that a particular Section of the English Bankruptcy Act was to be interpreted as deliberately taking away from a bankrupt the normal protection afforded to accused persons by the maxim *nemo tenetur seipsum accusare*. The matter is put very clearly, I think, in *Broom's Legal Maxims*, 10th edition, page 662 in this way :—

"The rule *nemo tenetur seipsum accusare*, which has been designated 'a maxim of our law as settled, as important and as wise as almost any other in it' is, however, sometimes trenched upon, and the privilege which it confers, is in special cases abrogated. Thus a bankrupt under examination before the Bankruptcy Court does not enjoy such privilege as regards any question touching his estate."

It seems to me, therefore, that the question which I have to decide is whether Section 51 of the Excise Enactment is to be interpreted as abrogating the general maxim or is to be read subject thereto.

On this point I think that the differences between the English law and local law on the subject of incriminating statements must be kept in mind. In England a witness in a Court of Law is not bound to answer questions which may tend to criminate him. In this country, however, the maxim is enforced in a different way, because under Section 132 of the Evidence Ordinance a witness is bound to answer all questions even though they may tend to criminate him, but if he is forced to answer such questions then no proceedings can be taken against him based upon his answers except proceedings for perjury.

Our Bankruptcy law also differs to some extent from English law and in the case of *Chops Loh Ban Chuan and Chuan Bee*[10] some doubt was cast upon the admissibility in criminal proceedings in this country of the answers given by a bankrupt during his public examination. In *Re Mohamed Yusoff Meera Hussain & Anor.*[11] I quoted a passage from the judgment of Barrett-Lennard J. in the former case at page 47 of the report and commented thereon as follows :—

"But as far as imprisonment is concerned I think it would be contrary to the principles underlying the decision of Chops Loh Ban Chuan & Chuan Bee's case to deprive a debtor of his liberty merely upon admissions extracted from him in the circumstances described in the above quoted passage."

The Section of the Bankruptcy Act upon which the decision of *Regina v. Scott*[2] proceeded is very strongly worded. The material parts are as follows :—

". . . . upon the appearance of such bankrupt . . . . it shall be lawful for the Court to examine such bankrupt . . . . . touching all matters relating to his trade, dealings or estate, or which may tend to disclose any secret grant, conveyance, or concealment of his lands, tenements, or debts, and to reduce his answers into writing, which examination so reduced into writing the said bankrupt shall sign and subscribe."

The bankrupt is thus compulsorily examined upon matters which tend to disclose secret grants, etc. — i.e. upon the very matters which are likely to criminate him.

This is a very different kind of provision from Section 51 which compels a man simply to give information. The law in England being that once incriminating answers are given they can be used against a person giving them, it followed that if the effect of that Section of the Bankruptcy Act was to compel the answers, then those answers could be used for any purpose. The law of evidence in this country being different on this point I doubt whether the principle of *Regina v. Scott*[2] is applicable at all. In any event I do not think the wording of Section 51 of the Excise Enactment is sufficiently strong to bring it within the principle of that decision.

Mr. Conaghan referred me to the meaning ascribed to the word "information" by the *Shorter Oxford English Dictionary*. It is clear from the definitions there given and from other definitions which I have studied that there are two distinct connotations of the word. One connotes the action of telling some fact — simply imparting knowledge; and the other connotes informing against, charging or accusing some other person. I think some assistance is derived in deciding in which sense the word is to be interpreted in Section 51 from the provisions of sub-section (ii) of Section 50. This makes the giving of false information an offence against Section 177 of the Penal Code. From this I think it follows that the word "information" in Section 50 must bear the same meaning as that in Section 177 of the Penal Code. The illustration to that Section in my opinion make it

clear that the word "information" there means information against others or information about offences committed by others. The same word appears in various parts of the Penal Code and in all cases it seems to me clearly to mean "information about others" and a distinction is made throughout the Code between the obligation to give information and the obligation to state the truth. I do not think it could be suggested that the word "information" where it is used in Section 51 of the Excise Enactment can have a different meaning from the same word in Section 50.

Merely upon the wording of the Section in its context, therefore, I would be inclined to think that Section 51 of the Excise Enactment has reference to information regarding the activities of other persons and does not include self-incriminatory statements regarding the activities of the person from whom the information is sought. I am confirmed in this view because the construction contended for by the Crown would undoubtedly have the result that a person could be compelled to confess and could then be convicted upon his confession. This construction appears to me to be so entirely repugnant to the whole spirit of the law that any other reasonable construction is to be preferred. I am, therefore, of opinion that Section 51 does not intend to abrogate the general maxim *nemo tenetur seipsum accusare,* but was intended to be read subject to that maxim.

The history in regard to statements taken by Customs and Excise authorities in this country appears to me to lend further support to this view. The first reported cases that I am aware of in which written statements were taken and recorded under the equivalent of Section 51 of the Excise Enactment are those of *Tan Shu En*[4] (a case under the Opium & Chandu Proclamation) decided in September, 1948; *Public Prosecutor v. Soh Tuan Cheung*[6] and *Chong Chin Yuan v. Public Prosecutor*[12] both decided in September, 1949. All these cases arose after the Emergency Regulations came into force, one of which was the old Regulation 31 (now Regulation 13) which allowed what were called "cautioned statements" taken by the Police from accused persons to be put in evidence. It is only since the Emergency Regulations have been in force that it has become the habit of the Customs, Chandu and Excise authorities to record written statements from persons intended to be accused of offences and then to tender those written statements in in evidence. The pre-war case of *Rasiah v. Public Prosecutor*[5] which decided that a statement made to a Customs Officer was admissible in evidence, did not deal with a recorded statement but with an entirely spontaneous remark made by the accused to a Customs Officer on the way to his house.

For these reasons I hold that the purpose and intention of Section 51 of the Excise Enactment is to obtain information in regard to the activities of persons other than the person interrogated. The information so obtained is in my opinion intended to be used in the same way as evidence obtained under Section 124 of the Criminal Procedure Code, as a starting point for collecting evidence *aliunde* of offences thus disclosed to have been committed. If in the course of obtaining such information the person interrogated makes admissions amounting to a confession then such admission cannot be used in evidence against him.

Since drafting this judgment I have the opportunity of reading the judgment of Hill J. in the case of *Heah Chin Kim v. Public Prosecutor*[13]. That was a case under the Dangerous Drugs Ordinance, 1952 and the "warning" given to the accused before his statement was taken was a somewhat longer one than that given in the present case. In his judgment Hill J. says :—

> "By its wording this warning contains, if no promise, certainly a threat and inducement and in this case it certainly proceeded from a person in authority. In my opinion it was sufficient to give the appellant grounds which would have appeared to him reasonable for supposing that he would gain an advantage or avoid some evil."

He also expressed the opinion that the provisions of Section 28 of the Dangerous Drugs Ordinance were so fundamentally opposed to established principles and procedure concerning the administration of justice that he doubted that they were ever intended to apply to such persons. It will be seen, therefore, that the views I have expressed are substantially in accord with the views expressed by Hill J.

I have already expressed the opinion that the so-called warning given in this case rendered the statement Exhibit P.5 inadmissible. There is, however, another circumstance in this case which renders this particular statement of doubtful value. The statement was taken in the presence of three other persons alleged to have been concerned in the matter. The appellant, when giving evidence, said he was asked to admit to the offence since three persons said he had sold the liquor to them. Whilst this was probably not the strict truth I think the mere presence of these three other persons may well have induced in the appellant the state of mind that he might as well confess because these three persons would give or had given information against him. For this reason also I am of opinion that Exhibit P.5 could not be looked upon as a voluntary statement and should not, therefore, have been admitted.

I am unable to accept Mr. Conaghan's contention that the earlier statements made by the appellant stand on the same footing as the written statement. I think an Excise Officer when carrying out his duties of enforcing the law is in a very similar position to that of a Police Officer in England. As was said by Murray-Aynsley C.J. in *Rex v. Man Woo*[15] :—

"It is true that in a sense the activities of all Government officers engaged in enforcing the law are Police duties".

Quite apart from any specific provision of the Enactment I can see no reason why such an officer should not ask questions from persons whether suspected or not from whom he thinks useful information can be obtained, as laid down in the first of the Judge's Rules; and as neither Section 124 of the Criminal Procedure Code nor Sections 25 and 26 of the Evidence Ordinance apply to Customs or Excise Officers there is nothing in law to prevent the answers given to them by a person subsequently accused of an offence from being used in evidence provided the Court is satisfied that those answers were voluntarily given.

Whilst on the one hand there is nothing on the record before me to indicate positively that the answers given by the appellant in the house and at the Customs Office before the arrest were given under any kind of threat, promise or inducement; on the other hand no warning in its true sense was given and it looks very much as though the Excise Officers had made up their minds to charge the appellant, at all events before the tins were identified, and that the appellant was by that time in custody. The position was thus very similar to that in the recent case of *Regina v. Bass*[15] where it was held that where there has been a breach of the Judges' Rules the trial Court can in its discretion refuse to admit the statement. Unfortunately the learned President in the present case did not exercise any discretion on the point — the question was not raised and the statements went in without objection. The position, therefore, is that the trial Court might have excluded the statement identifying the tins and had he done so an appellate Court would not have interfered. My own view is that the first statement made in the house was entirely voluntary and admissible but that with regard to the second statement in the Customs Office there is some reason to doubt, upon the evidence as it stands, whether it ought to have been admitted.

Without Exhibit P.5 and without the admission by the appellant that the tins exhibited were those he had dealt with there was no evidence to connect the appellant with the particular liquor in respect of which he was charged. It is clear, therefore, that the conviction cannot stand and had the trial been in other respects satisfactory I would have been inclined to order a re-trial.

It seems to me, however, from the record, that there was a good deal of material evidence available which was not placed before the Court. The learned President in his grounds of decision refers to three other Chinese who had been before the Court for offences in connection with the same transaction, and I have already referred to the fact that the statement Exhibit P.5 was taken from the appellant in the presence of three other Chinese involved in the case. No explanation was offered as to why these three Chinese were neither called as witnesses nor offered for cross-examination, nor was any evidence given as to how Exhibits P.1 and P.2 came into the hands of the Excise authorities.

I cannot help feeling that this case is an example of the unfortunate tendency which I have noticed in recent years on the part of prosecuting officers of all departments to think that where a confession has been obtained from the accused it is sufficient to put before the Court the minimum of other evidence. In my opinion whether or not an accused person has confessed it remains the duty of the prosecution to place *all* the material evidence before the Court with the proviso that they are not compelled to call witnesses whom they have good reason to think are not witnesses of truth or are likely to be hostile; and when such witnesses are not called they should usually be offered for cross-examination, unless there is some good reason for not doing so. This opinion is based on the decisions of *Rex v. Sanmugam*[16], *Public Prosecutor v. Lee Pak*[17], *Adel Muhammed El Dabbah v. Attorney-General of Palestine*[18], and *Mohamed Yatin v. Public Prosecutor*[19].

I cannot but feel that had all the material evidence been put before the Court in the present case there might have been sufficient evidence apart from the appellant's statements. I think therefore that to order a re-trial would have the effect of allowing the prosecution another opportunity to adduce evidence which ought to have been adduced at the trial. I have no alternative, therefore, but to quash the conviction.

Conviction quashed.

Solicitors: *Conaghan, Wreford & Thornton.*